

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 20-0557

ARNIE R. JOHNSON

Claimant-Respondent

V.

HUNTINGTON INGALLS INDUSTRIES,
INCORPORATED

Self-Insured Employer-Petitioner

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Respondent

DATE ISSUED: 02/17/2021

ORDER

Employer appeals Administrative Law Judge Paul C. Johnson, Jr.'s Order Denying Section 8(f) Relief and Order on Reconsideration Denying Section 8(f) Relief (2018-LHC-00592) on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* (Act). By motion filed December 22, 2020, the Director, Office of Workers' Compensation Programs (the Director), moves to dismiss Employer's appeal as premature. For the reasons stated below, we grant the Director's motion and dismiss Employer's appeal without prejudice. 20 C.F.R. §§802.219, 802.401(b).

Claimant injured her neck on November 20, 2012, during the course of her employment for Employer. Employer averred it had paid Claimant compensation and medical benefits due, it was continuing to pay Claimant compensation for permanent total disability, 33 U.S. C. §908(a), and the only unresolved issue before the administrative law judge was its request for Section 8(f) relief, 33 U.S.C. §908(f). Tr. at 4-5; *see also* Emp.

Pre-Hearing Statement/Stipulations (Aug. 20, 2018).¹ In his decision, the administrative law judge stated Employer and the Director agree Claimant had a pre-existing permanent partial disability and this pre-existing disability was manifest to Employer. The administrative law judge determined Employer did not show Claimant's permanent total disability is not solely due to her November 20, 2012 work-related neck injury. Order Denying Section 8(f) Relief at 4; *see generally Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Harcum]*, 131 F.3d 1079, 31 BRBS 164(CRT) (4th Cir. 1997). Consequently, he denied Employer's request for Section 8(f) relief. The administrative law judge also denied Employer's motion for reconsideration.

On appeal, Employer challenges the administrative law judge's denial of Section 8(f) relief. As the Director correctly contends, we are precluded from addressing Employer's appeal at this juncture because the administrative law judge did not issue a "final" decision or order; he did not award or deny Claimant's claim for benefits. The administrative law judge cannot address a claim for Section 8(f) relief if there is no award in excess of 104 weeks of benefits for permanent disability or death.² *See* 33 U.S.C. § 908(f)(1); *Gupton v. Newport News Shipbuilding & Dry Dock Co.*, 33 BRBS 94, 96 (1999); *Hansen v. Container Stevedoring Co.*, 31 BRBS 155 (1997). It is necessary for the administrative law judge to determine Claimant's entitlement to an award of permanent

¹ Employer submitted its "stipulations" to the administrative law judge on August 20, 2018. Neither Claimant nor her attorney signed the "stipulations."

² Section 19(c) of the Act provides that an administrative law judge "shall" by "order" "make an award" or "reject the claim." 33 U.S.C. §919(c); *see also* 33 U.S.C. §919(e). The implementing regulation, Section 702.348, provides that:

the administrative law judge shall have prepared a final decision and order, in the form of a compensation order, with respect to the claim, making an award to the claimant or rejecting the claim. The compensation order shall contain appropriate findings of fact and conclusions of law with respect thereto, and shall be concluded with one or more paragraphs containing the order of the administrative law judge

20 C.F.R. §702.348; *see Luttrell v. Alutiiq Global Solutions*, 45 BRBS 31 (2011); *Davis v. Delaware River Solutions*, 39 BRBS 5 (2005); *see also Kreschollek v. Southern Stevedoring Co.*, 223 F.3d 202, 207, 34 BRBS 48, 52(CRT) (3d Cir. 2000) ("After conducting a hearing, the ALJ makes findings of fact and conclusions of law and issues an enforceable compensation order, which is filed with the district director.").

disability benefits in excess of 104 weeks before addressing Employer's request for Section 8(f) relief and to formally enter such an award. *See* n. 2, *supra*.

Consequently, for the reasons stated in *Gupton*, 33 BRBS at 96, we grant the Director's motion, dismiss Employer's appeal, vacate the administrative law judge's Order denying Section 8(f) relief, and remand the case to the administrative law judge for any necessary proceedings and for the entry of a specific award or denial of benefits. 33 U.S.C. §919(d); 20 C.F.R. §§702.331-702.351; *see also McCracken v. Spearin, Preston & Burrows, Inc.*, 36 BRBS 136 (2002) (award must be based on evidence admitted into the record); *Ramos v. Global Terminal & Container Services, Inc.*, 34 BRBS 83 (1999) (award may be based on parties' stipulations). The administrative law judge then may address Employer's claim for Section 8(f) relief. If any party is aggrieved by this decision, the party may file an appeal within 30 days of the date the administrative law judge's final compensation order awarding or denying benefits is filed in the district director's office. 33 U.S.C. §§919(c), 921(a).

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge